

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

JAMES H. SHORTZ,

PLAINTIFF,

VS.

UNITED PARCEL SERVICE,

DEFENDANT.

)
)
)
)
)
)
)
)
)
)
)

CASE NO.: 3:05-CV-00675-MHT-SRW

**DEFENDANT UNITED PARCEL SERVICE, INC.'S RESPONSE TO
PLAINTIFF'S ANSWER TO MAGISTRATE JUDGE'S RECOMMENDATION**

Defendant United Parcel Service, Inc. ("UPS") hereby files this Response to Plaintiff's Answer to Magistrate Judge's Recommendation ("Answer"), and shows the Court as follows:

Judge Walker entered a Recommendation on September 28, 2005, that UPS's Motion to Dismiss Plaintiff's Complaint be granted. In his Answer to the Recommendation, Plaintiff merely repeats prior arguments that he made in both his Complaint and his Response to UPS's Motion to Dismiss that he filed on August 30, 2005, which arguments Judge Walker has already found to be without merit.¹ He fails to raise any new issues of fact or conclusions of law. Accordingly, this Court should disregard Plaintiff's Answer.

UPS respectfully submits that Judge Walker's Recommendation properly adheres to established law and precedent. As such, UPS requests that this Court uphold Judge Walker's Recommendation and grant UPS's Motion to Dismiss the Complaint.

¹ UPS also notes that Plaintiff's Answer is untimely. Judge Walker's Recommendation gave the parties until October 10, 2005, to file their objections. Plaintiff's Answer was filed on October 11.

Respectfully submitted, this 13th day of October, 2005.

/s/ William R. Pringle

William R. Pringle, Esq.

Alabama Bar No. PRI066

CHRISTIAN & SMALL LLP

505 North 20th Street, Suite 1800

Birmingham, Alabama 35203

Attorneys for Defendant

UNITED PARCEL SERVICE, INC.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

JAMES H. SHORTZ,

PLAINTIFF,

VS.

UNITED PARCEL SERVICE,

DEFENDANT.

CASE NO.: 3:05-CV-00675-MHT-SRW

CERTIFICATE OF SERVICE

This is to certify that on this date I have filed a true and correct copy of the within and foregoing **DEFENDANT UNITED PARCEL SERVICE, INC.'S RESPONSE TO PLAINTIFF'S ANSWER TO MAGISTRATE JUDGE'S RECOMMENDATION** electronically with the Clerk of Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record participating in the CM/ECF system for this civil action, and I have served a true and correct copy of said filing upon Plaintiff by depositing same in the United States Mail with sufficient postage thereon to ensure delivery as follows:

James H. Shortz
P.O. Box 3874
Montgomery, Alabama 36109

This 13th day of October, 2005.

/s/ William R. Pringle
William R. Pringle, Esq.
Alabama Bar No. PRI066